

Application No. 10/750,480
Amendment dated June 8, 2006
Reply to Office Action of March 8, 2006

REMARKS

Claims 1, 2, 4, 5, 7, 11, 12, 14, 15, 17, 21, 23, 24, and 26 are presented for Examiner Matzek's consideration.

Claims 3, 6, 8, 9, 10, 13, 16, 18, 19, 20, 22, 25, 27, 28 and 29 have been canceled.

Claims 1, 2, 7, 11, 12, 17, 21, and 26 have been amended to delete the term "discontinuous."

Claims 1, 11, and 21 have been amended to better clarify which portions of the absorbent structure are being compared. Specifically, the term "absorbent structure in the channels" has been amended to read "absorbent structure **under** the channels" to better clarify that the channels themselves do not contain absorbent material but have absorbent material under them. Support for this amendment can be found at page 37: 21-37 of the specification which teaches that the channels extend through the thickness of the absorbent structure in an amount ranging from no less than 10 up to no more than 90. Therefore, it would be clear to one skilled in the art that some amount of absorbent material is located "under" the channel. It should be noted that the term "under" does not imply any orientation and only indicates that the specific absorbent material being referenced is located in the same plane, as defined by the machine direction and the z-direction, as the channel. The Examiner appears to agree with this point at page 3 of the office action, stating, "The finished product will have dug-out channels within the absorbent articles. At the bottom of these channels is absorbent material."

Claims 1, 11, and 21 have been amended to require that the absorbent structure further include "binder material activated to form inter-fiber bonds within the absorbent structure." Support for these amendments can be found at least at original claims 6, 16, and 25.

Claims 1, 11, and 21 have been amended to require that the "channels extend through no less than 10 percent of the thickness of the absorbent structure" and the "channels extend through no more than 90 percent of the thickness of the absorbent structure." Support for these amendments can be found at least at original claims 3, 13, and 22.

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Claims 4, 5, 7, 14, 15, 17, 23, 24, and 26 have been amended to correct dependency.

No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed March 8, 2006, claims 1-29 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement and 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These rejections are respectfully traversed to the extent that they may apply to the presently presented claims.

The term "discontinuous" has been deleted from the claims. Therefore, the claims are internally consistent and definite. The rejection as to this point should be withdrawn.

The "Examiner has interpreted the empty spaces provided by the manufacturing process in the specification (pages 36-39) as the channels." (Office Action at page 2). The Examiner continues, stating, "They necessarily have a density less than their adjacent areas as they possess no material." The Applicants have amended the claim language to further clarify that the absorbent material being compared is "under" the channels as opposed to "in" the channels. Applicants respectfully submit that one skilled in the art would have interpreted this language in this way. However, in an effort to advance this case to allowance, the above referenced amendment was made.

Therefore, the currently pending claims are enabled, particularly pointed out, distinctly claimed, and definite. Applicants respectfully request that the rejections under § 112 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 1 and 11 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over European Patent Number EP 0 933 074 to Sugito (*Sugito*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

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Sugito fails to set forth each and every element, either expressly or inherently, of Applicants' currently presented claims 1 and 11 and therefore fails to anticipate Applicants' currently presented claims 1 and 11.

Sugito does not teach an absorbent structure wherein "the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels" because there is no absorbent structure under the channels.

Sugito also fails to teach an absorbent structure wherein the "channels extend through no more than 90 percent of the thickness of the absorbent structure" as required by Applicants' currently presented claims 1 and 11. The channels of *Sugito* extend through 100 percent of the thickness of the absorbent structure.

Sugito also fails to teach an absorbent structure comprising "binder material activated to form inter-fiber bonds within the absorbent structure" as required by Applicants' currently presented claims 1 and 11.

Therefore *Sugito* fails to anticipate Applicants' currently presented claims 1 and 11 because "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)). Applicants respectfully request that the rejection as to these claims be withdrawn.

By way of the Office Action mailed March 8, 2006, claim 1 stands rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent 4,005,957 to Savich (*Savich*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Savich fails to set forth each and every element, either expressly or inherently, of Applicants' currently presented claim 1 and therefore fails to anticipate Applicants' currently presented claim 1.

Savich teaches that the absorbent structure has high basis weight regions 62 and low basis weight regions 64 but does not teach an absorbent structure wherein "the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels" as required by Applicants' currently presented claim 1.

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Additionally, *Savich* does not teach an absorbent structure containing "binder material activated to form inter-fiber bonds within the absorbent structure" as required by Applicants' currently presented claim 1.

Therefore, Applicants respectfully request that the rejection as to this claim be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 2, 7, 12 and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over *Sugito*. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, *Sugito* fails to set forth, expressly or inherently, that, 1) the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels; 2) the channels extend through no more than 90 percent the thickness of the absorbent structure; and/or 3) the absorbent structure includes binder material activated to form inter-fiber bonds within the absorbent structure.

Therefore, *Sugito* fails to anticipate or render obvious Applicants' currently presented claims 1, 11, and 21. Applicants' claims 2, 7 and 12 depend from either claims 1 or 11 and are patentably distinct over *Sugito* for at least the same reasons as claims 1 and 11 discussed above. Therefore, Applicants respectfully request that the rejection as to claims 2, 7, 12 and 21 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 2 and 7 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over *Savich*. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, *Savich* fails to teach an absorbent structure 1) wherein the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels and/or 2) contains binder material activated to form inter-fiber bonds within the absorbent structure as required by Applicants' currently presented claim 1. Claims 2 and 7 depend from claim 1 and are patentably distinct over *Savich* for at least the same reasons as currently presented claim 1.

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Therefore, Applicants respectfully request that the rejection as to claims 2 and 7 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 3-5, 8-10, 13-15 and 22-24 stand rejected under 35 U.S.C. § 103(a) as obvious over *Sugito*. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claims 3, 8-10, 13, and 22 have been canceled rendering the rejection as to these claims moot.

As discussed above, *Sugito* fails to set forth, expressly or inherently, that, 1) the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels; 2) the channels extend through no more than 90 percent the thickness of the absorbent structure; and/or 3) the absorbent structure includes binder material activated to form inter-fiber bonds within the absorbent structure as required by Applicants' currently presented claims 1, 11, and 21. Therefore, *Sugito* fails to anticipate or render obvious Applicants' currently presented claims 1, 11, and 21. Applicants' claims 4-5, 14-15, and 23-24 depend from claims 1, 11, or 21 and are patentably distinct over *Sugito* for at least the same reasons as claims 1, 11, and 21 discussed above. Therefore, Applicants respectfully request that this rejection to claims 4-5, 14-15, and 23-24 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 3-5 and 8-10 stand rejected under 35 U.S.C. § 103(a) as obvious over *Savich*. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claims 3 and 8-10 have been canceled rendering the rejection as to these claims moot.

As discussed above, *Savich* fails to set forth, expressly or inherently, that, 1) the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels and/or 2) the absorbent structure includes binder material activated to form inter-fiber bonds within the absorbent structure as required by Applicants' currently presented claim 1. Therefore, *Savich* fails to anticipate or render obvious Applicants' currently presented claim 1. Applicants' claims 4-5 depend

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from claim 1 and are patentably distinct over *Savich* for at least the same reasons as claim 1 discussed above. Therefore, Applicants respectfully request that this rejection to claims 4-5 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 6, 16-20 and 25-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sugito* in view of U.S. patent 6,407,309 to Schilkowski (*Schilkowski*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claims 6, 16, 18, 19, 20, 25, 27, 28, and 29 have been canceled rendering the rejection as to these claims moot.

As to the remaining claims and as discussed above, *Sugito* fails to set forth, expressly or inherently, that, 1) the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels; 2) the channels extend through no more than 90 percent the thickness of the absorbent structure; and/or 3) the absorbent structure includes binder material activated to form inter-fiber bonds within the absorbent structure as required by Applicants' currently presented claims 1, 11, and 21.

Schilkowski teaches the production of sanitary napkins with short cellulose fibers and thermoplastic binder fibers to reduce dusting. However, *Schilkowski* does not teach channels of any kind and therefore does not teach channels that extend through no more than 90 percent the thickness of the absorbent structure. Likewise, because *Schilkowski* does not teach channels, *Schilkowski* does not teach that the density of the absorbent structure under the channels is less than the density of a portion of the absorbent structure adjacent the channels. Therefore, neither *Sugito* nor *Schilkowski*, alone or in combination, teach or suggest all the claim limitations of Applicants' currently presented claims 1, 11, and 21. Therefore, no *prima facie* case of obviousness has been established. Applicants' claims 17 and 26 depend from claims 11 and 21 respectively and are patentably distinct over the combination of *Sugito* and *Schilkowski* for at least the same reasons as claims 1, 11, and 21 discussed above. Therefore, Applicants respectfully request that this rejection to claims 17 and 26 be withdrawn.

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Furthermore, no *prima facie* case of obviousness has been established because there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine *Sugito* and *Schilkowski* as suggested by the Examiner.

The Examiner has previously stated that,

Since *Sugito* and *Schilkowski* are from the same field of endeavor (i.e. absorbent articles), the purpose disclosed by *Schilkowski* would have been recognized in the pertinent art of *Sugito*. (OA dated 9/16/2005 at page 8).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of *Sugito* with the binder fibers of *Schilkowski* motivated by the desire to prevent the "dusting" of the absorbent cellulosic fibers. (OA dated 9/16/2005 at page 8).

The Examiner further states that,

The binder fibers would improve the structural integrity of the article by helping to retain the fibers of the absorbent article and their associated "fines" or fragmented fibers (dust). (OA dated 3/8/2006 at pages 6 and 7).

Despite these assertions, no *prima facie* case of obviousness has been established because the Examiner has provided no motivation to combine these references. The Examiner merely recites a purported benefit of *Schilkowski*, i.e., to prevent dusting, and summarily concludes that this is adequate motivation to combine *Sugito* and *Schilkowski*.

The Examiner has provided no citation in either *Sugito* or *Schilkowski* to indicate that one skilled in the art would be motivated to modify the article of *Sugito* with the binder fibers of *Schilkowski*. The fact that the references *could* be modified does not render the resultant modification obvious unless the prior art teaches or suggests the desirability of the modification. M.P.E.P. §§ 2142, 2143.

Schilkowski teaches at column 1, lines 56-60, that the binding fibers are added to the surfaces of the material to "upgrade" from an absorbent insert material, which requires a surface protecting layer, to a self contained product that is usable e.g. for cleaning purposes. *Sugito* is an absorbent insert material, therefore, there is no motivation to upgrade as taught in *Schilkowski*, and therefore there is no motivation to combine the references.

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Furthermore, *Sugito* provides no motivation to combine the references because *Sugito* already "solves" the problem of dusting by placing the pad between a topsheet and a backsheet as taught at column 1, lines 10 and 11. Additionally, *Sugito* teaches at column 4, lines 21, 25 that the core can be further covered with one or more layers of tissue paper. Therefore, neither reference provides any motivation for the proposed combination and therefore, no *prima facie* case of obviousness has been established. As such, Applicants respectfully request that this rejection to claims 17 and 26 be withdrawn.

By way of the Office Action mailed March 8, 2006, claims 1-29 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/460,882 in view of *Sugito*.

The present application and Application No. 10/460,882 are pending. Allowable subject matter has not been indicated in either of these applications. It is not evident which of the pending applications (or claims thereof) will become allowable first. Therefore, any action by Applicants with regard to the present rejection is premature.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

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